

EFFECTIVE DATE NOTE: At 69 FR 69104, Nov. 26, 2004, § 1902.2 was amended in paragraph (d) by revising the words "Form FmHA or its successor agency under Public Law 103-354 1944-51" to read "Form RD 3560-51" and in paragraph (e) by revising the words "Form FmHA or its successor agency under Public Law 103-354 1944-53" to read "Form RD 3560-53," effective February 24, 2005.

**§ 1902.3 Procedures to follow in fund disbursement.**

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to be processed through the ADPS system.

(b) When check(s) are delivered to the District or County Office, the District Director or County Supervisor will make sure that the name of the borrower and the amount(s) of check(s) coincide with the request on file. The District Director or County Supervisor should be sure that the check is properly endorsed to insure payment to the intended recipient. Examples of such restrictive endorsements are:

(1) "For Deposit only to Account No. (Number of Construction Account) of (Name of Borrower) in (Name of Financial Institution)."

(2) "Pay to the order of (3rd party payee)"—(Contractor, Developer, Sub-Contractor, Building Supply House, etc.) for the purpose of \_\_\_\_\_.

(c) When necessary and only under the circumstances listed in § 1902.2 the District Director or County Supervisor will establish, or cause to be established, a supervised bank account. Funds deposited in a supervised bank account are to be recorded and accounted for on Form FmHA or its successor agency under Public Law 103-354 402.2, "Statement of Deposits and Withdrawals."

[46 FR 36106, July 14, 1981, as amended at 53 FR 26588, July 14, 1988; 53 FR 35670, Sept. 14, 1988; 54 FR 39727, Sept. 28, 1989]

**§ 1902.4 Establishing MFH reserve accounts in a supervised bank account.**

(a) *General requirements.* All MFH borrowers required to maintain reserve accounts must place the reserve accounts in a supervised bank account(s) which meets the following requirements:

(1) *Countersignature requirements.* The reserve account must require that any funds withdrawn be countersigned by an authorized FmHA or its successor agency under Public Law 103-354 official.

(2) *Restrictions on collateral.* The financial institution holding the reserve account must ensure that the funds are not pledged or taken as security without the Agency's prior consent.

(3) *Interest bearing.* The reserve account funds are encouraged to be maintained in an interest-bearing account. The "Interest-Bearing Deposit Agreement" set out in exhibit B of this subpart is not required to be used for reserve accounts.

(4) *Restricted investments.* Reserve funds must be placed in investments authorized in subpart C of part 1930 of this chapter. The authorized investments are deemed to be of acceptable risk such that the potential for any loss is minimal.

(5) *Financial institutions.* The reserve account must be maintained in authorized financial institutions set out in subpart C of part 1930 of this chapter (e.g., banks, savings and loan institutions, credit unions, brokerage firms, mutual funds, etc.). Generally, any financial institution may be used provided invested or deposited funds are insured to protect against theft and dishonesty. The reserve account funds need not be Federally insured. However, if Federally insured, any amount held above the Federal insurance ceilings established must be backed by a pledge of collateral from the financial institution, or otherwise covered by non-federal insurance against theft and dishonesty.

(6) *Rules where multiple projects are involved.* A reserve account(s) must be maintained for each borrower. When a borrower owns multiple projects, reserve accounts may be established for each project. A single reserve account may also be established by a borrower owning multiple projects, provided the conditions set out in subpart C of part 1930 of this chapter are met.

(7) *Term.* Reserve accounts are expected to be kept for the full term of the loan.

(b) *Deposits and account activity statements*—(1) *Deposits.* Generally, the

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FmHA or its successor agency under Public Law 103-354 will not require the review or approval of deposits or the use of Forms FmHA or its successor agency under Public Law 103-354 402-1 or FmHA or its successor agency under Public Law 103-354 402-2.

(2) *Account activity statements.* Generally, the FmHA or its successor agency under Public Law 103-354 will not monitor or reconcile the reserve account activity statements issued periodically by the financial institutions holding the funds. FmHA or its successor agency under Public Law 103-354 will monitor reserve account levels through budget reports, audits, and Agency reserve tracking systems. If disputes arise or the borrower is in violation of Agency regulations, the Agency may require account activity statements. When account activity statements are sought, it will normally be sufficient to obtain the statement which reflects balances as of the last activity statement ending period. Form FmHA or its successor agency under Public Law 103-354 402-2 is not required to be used.

[59 FR 3778, Jan. 27, 1994]

EFFECTIVE DATE NOTE: At 69 FR 69104, Nov. 26, 2004, §1902.4 was amended in paragraph (a)(4) by revising the words “subpart C of part 1930 of this chapter” to read “7 CFR part 3560, subpart G,” in paragraph (a)(5) by revising the words “subpart C of part 1930 of this chapter” to read “7 CFR part 3560, subpart G,” and in paragraph (a)(6) by revising the words “subpart C of part 1930 of this chapter” to read “7 CFR part 3560, subpart G,” effective February 24, 2005.

### § 1902.5 [Reserved]

### § 1902.6 Establishing supervised bank accounts.

(a) Each borrower will be given an opportunity to choose the financial institution in which the supervised bank account will be established, provided the bank is a member of the FDIC, the savings and loan is a member of the FSLIC, and the credit union is a member of the NCUA.

(b) When accounts are established, it should be determined that:

(1) The financial institution is fully informed concerning the provisions of the applicable deposit agreement,

(2) Agreements are reached with respect to the services to be provided by the financial institution including the frequency and method of transmittal of checking account statements, and

(3) Agreement is reached with the financial institution regarding the place where the counter-signature will be on checks.

(c) When possible, District Directors or County Supervisors will make arrangements with financial institutions to waive service charges in connection with supervised bank accounts. However, there is no objection to the payment by the borrower of a reasonable charge for such service.

(d) For each borrower, if the amounts of any loan and grant funds, plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed \$100,000, the financial institution will be required to pledge collateral for the excess over \$100,000, before the deposit is made (see § 1902.7).

(e) Only one supervised bank account will be established for any borrower regardless of the amount or source of funds, except for RRH loans where separate accounts will be established for each project.

(f) When a supervised bank account is established, an original and two copies of the applicable Deposit Agreement and the Interest-Bearing Deposit Agreement (Exhibit B), when applicable, will be executed by the borrower, the financial institution, and a District or County Office employee. The original will be retained in the borrower's case file, one executed copy will be delivered to the financial institution and one executed copy to the borrower. An extra copy of the Interest-Bearing Deposit Agreement, when applicable, will be prepared and attached to the certificate, passbook, or other evidence of deposit representing the interest-bearing deposit.

(1) If an agreement on the applicable Deposit Agreement has previously been executed and Form FmHA or its successor agency under Public Law 103-354 402-6, “Termination of Interest in Supervised Bank Account,” has not been executed with respect to it, a new